

Ex. 14

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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NEUROGRAFIX, a California)
corporation; WASHINGTON)
RESEARCH FOUNDATION, a)
not-for-profit Washington)
corporation,)
Plaintiffs,) No. CV 10-1990
vs.) (MRP)(RZX)
SIEMENS MEDICAL SOLUTIONS)
USA, INC., a Delaware)
corporation and SIEMENS)
AKTIENGESELLSCHAFT, a)
German corporation,)
Defendants.)
AND RELATED CROSS-ACTION.)

)

VIDEOTAPED DEPOSITION OF
MICHAEL BRANT-ZAWADZKI, M.D.
Los Angeles, California
Tuesday, August 16, 2011

Reported By:

LISA MOSKOWITZ, CSR 10816, RPR, CLR

Job No. 41126

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5 August 16, 2011

6 9:55 a.m.

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9 Videotaped Deposition of MICHAEL

10 BRANT-ZAWADZKI, M.D., held at the offices of
11 Russ, August & Kabat, 12424 Wilshire Boulevard,
12 12th Floor, Los Angeles, California, pursuant
13 to Notice before Lisa Moskowitz, Certified
14 Shorthand Reporter and Registered Professional
15 Reporter of the State of California.

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1 BY MR. LoCASCIO: 13:03

2 Q. Dr. Bryan cites to several articles
3 that talk about the ROI impacting quantitative
4 measurements. You'd agree with him that the
5 selection of the ROI impacts quantitative 13:04
6 measurements of signal intensity; correct?

7 MR. FENSTER: Objection. Vague.

8 THE WITNESS: Well, I think that
9 the articles are reversed in the context
10 of those articles, are research articles 13:04
11 written for the purposes of explaining a
12 methodology towards a certain purpose in
13 the research work and guiding other
14 researchers as to how to reproduce that
15 work, I think. I mean that's my sense 13:04
16 of the context in which he made that
17 statement or you made that statement.

18 BY MR. LoCASCIO:

19 Q. Do you agree that the method of ROI
20 definition has a direct influence on 13:04
21 quantitative outcome? Is that a true statement
22 or not?

23 MR. FENSTER: Objection. Vague.

24 THE WITNESS: In the purest
25 mathematical sense, that's a true 13:04

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1 statement.

13:04

2 BY MR. LoCASCIO:

3 Q. And do you believe there's no
4 practical influence on the quantitative
5 outcome? Is that the basis for your sort of 13:04
6 hedging on that a little bit?

7 MR. FENSTER: Objection. Vague,
8 incomplete hypothetical.

9 THE WITNESS: So yes, I think that
10 there is a difference between practical 13:05
11 and purely mathematical. Maybe I can
12 tell an anecdote to give you -- maybe
13 it's a little bit off color, but I'll
14 try to make it -- so if you ask an
15 engineer and a physicist to approach the 13:05
16 object of their most intense desire with
17 a member of their opposite sex and you
18 tell them you can only go halfway with
19 each step, the physicist will say or the
20 mathematician will say, "I'm giving up. 13:05
21 I'll never get there." And the engineer
22 will say, "Well, I calculate that in six
23 steps I'll be there for all practical
24 purposes."

25 So that's the difference between 13:05

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absolute mathematical reasoning, 13:05
quantitative, if you will, and
practical; right? So if I choose to
translate that or if I translate that
into the current context, if I take 13:06
three different ways of selecting region
of interest, I may get to the 1.1
conspicuity threshold 90 percent of the
time with each of the different three
methodologies. That would be the 13:06
practical end result of not having a
standard in a mathematical sense or
quantitative sense for doing the
calculations; right?

15 BY MR. LoCASCIO: 13:06

16 Q. But just as if you could take three
17 different ways and get to 1.1 each way, you'd
18 acknowledge that it's possible the math could
19 work out that you do it once and you get 1.12,
20 you do it once and you get 1.10, and you do it 13:06
21 once and you get 1.08. That's possible as
22 well. Fair?

23 MR. FENSTER: Objection.

24 Incomplete hypothetical.

25 THE WITNESS: Well, I think it's 13:06

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1 Q. That's what this shows? 14:20

2 A. Yes. It speaks for itself.

3 Q. You looked at Dr. Bryan's images as
4 well from his report; correct, sir?

5 A. Yes. 14:20

6 Q. I'll hand you what we'll mark as
7 defendants 41.

8 (Defendants' Exhibit 41 was marked
9 for identification.)

10 BY MR. LoCASCIO: 14:20

11 Q. And based on some of the earlier
12 discussion today, I got the sense, sir, that
13 sometimes you thought Dr. Bryan's ROI
14 selections were not consistent with the
15 teachings of the 360 patent, and sometimes they 14:20
16 were. Is that correct?

17 A. Yes.

18 Q. Can you walk me through the images in
19 Exhibit C and tell me where you think
20 Dr. Bryan's ROI placements or sizes, et cetera, 14:21
21 the selection of ROIs by Dr. Bryan are
22 consistent with the teachings of the 360 patent
23 and where they are not? Let me first ask are
24 you capable of doing that as we walk through
25 these? 14:21

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1 A. Yes.

14:21

2 Q. Can you do that for me? And perhaps
3 the easiest way is just to refer to the figure
4 on the bottom. So the first one is Exhibit C,
5 figure 1. And the ROIs are conveniently 14:21
6 numbered. So you can just sort of and walk
7 through them and tell me if they are consistent
8 with the 360 patent or in your view an opinion
9 not consistent with the proper selection of an
10 ROI. 14:21

11 A. Right. So just as an example, ROI
12 No. 3 -- the selection of ROI No. 3 or No. 2
13 for that matter, neither one, shows what could
14 be conceived of as the brightest area on an
15 image. And Dr. Bryan, I think, would argue 14:22
16 that this is an example of how the patent is
17 nonspecific or whatever the right term is
18 because it allows a calculation where
19 conspicuity of the nerve is actually lower than
20 the, quote, surrounding, unquote, tissue; 14:22
21 right?

22 So to me that, again, is inconsistent
23 because to me the understanding is you compare
24 the conspicuity of the nerve with the nearby
25 adjacent or surrounding tissue. So the more 14:22

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1 appropriate region of interest in this case -- 14:22

2 I don't even know if Dr. Bryan chose one on
3 this particular image that's the most

4 appropriate. In fact, I would argue he didn't.

5 But that's an example of where, for the 14:22

6 purposes of demonstration and argumentation,

7 Dr. Bryan chose regions of interest that would
8 dispel the patent.

9 Q. Let's do this in a more orderly

10 fashion. Dr. Bryan identifies some as 14:23

11 non-neural and some as nerve. Do you agree

12 with his characterization of ROIs 1 through 11

13 on Exhibit C as being reflective of neural or

14 non-neural tissue?

15 A. In general. I don't know that I 14:23

16 would select those same exact spots. But, you

17 know, No. 5, No. 6, No. 7 are neural tissue.

18 Again, we talked earlier about the most
19 representative segment, and I would say that

20 No. 5 may not be the most representative 14:23

21 segment of neural tissue that one skilled in

22 the art would choose if one were doing what is
23 instructed by the patent. So, again, depending

24 on which specific ones we look at.

25 As far as the non-neural tissue, I 14:24

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1 C E R T I F I C A T E

2 STATE OF CALIFORNIA:

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4 I, LISA MOSKOWITZ, CSR, RPR, CLR,
5 shorthand reporter, do hereby certify:

6 That the witness whose deposition is
7 hereinbefore set forth was duly sworn, and that
8 such deposition is a true record of the
9 testimony given by such witness.

10 I further certify that I am not related
11 to any of the parties to this action by blood
12 or marriage, and that I am in no way interested
13 in the outcome of this matter.

14 IN WITNESS WHEREOF, I have hereunto set
15 my hand this 19th day of August, 2011.

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18 LISA MOSKOWITZ, CSR, RPR, CLR
19 Shorthand Reporter

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